Rulemaking Hearing Rules
of the Tennessee Department of Transportation

Chapter 1680-02-03 [Chapter 1680-11-01 as amended]
Control of Outdoor Advertising

Responses to Public Comments

I. INTRODUCTION

Effective on June 22, 2020, Public Chapter 706 amended Title 54, Chapter 21, of the Tennessee Code to enact the "Outdoor Advertising and Control Act of 2020" (also referred to hereinafter as the "2020 Act"). T.C.A. § 54-21-111 authorized and directed the Commissioner, within sixty (60) days after the effective date of the 2020 Act, to "begin promulgating and enforcing only those rules as necessary to carry out this chapter and 23 U.S.C. § 131." Accordingly, on August 21, 2020, the Tennessee Department of Transportation ("TDOT") filed a notice of rulemaking hearing with the Secretary of State to begin the process of promulgating proposed amendments to Chapter 1680-02-03, Control of Outdoor Advertising, including the renumbering of the rule chapter to 1680-11-01.

TDOT solicited written comments and held a public rulemaking hearing on November 4, 2020, to receive public comment on the proposed revisions to Chapter 1680-02-03. A copy of the transcript of the public hearing is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov. At the public hearing, TDOT agreed to extend the time for receiving public comments to December 4, 2020, and TDOT did receive additional written comments.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDOT summarizes the written comments and comments received at, and after, the public rulemaking hearing and makes the following responses to these comments. The comments and responses are organized sequentially by rule number as identified in the new rule chapter.

General Comments:

1. The Outdoor Advertising Association of Tennessee ("OAAT")[1] asks whether the Notice of Rulemaking Hearing materials were sent to all persons who held outdoor

[1] Tammy A. Phillips, CEO/Executive Director, submitted OAAT's official written comments via email on November 3, 2020. Several other individuals submitted written comments attaching and endorsing OAAT's comments, including David Easterling, VP/General Manager, Lamar Advertising Co. (Clarksville); Ashley

advertising permits from TDOT as of September 11, 2019. Similar concerns were expressed by other commenters.

Response: TDOT sent notice of the proposed rulemaking and related materials to OAAT and other interested agencies, associations, and industry representatives via available email addresses, but TDOT did not initially mail the notice to all permit holders. After conducting the public hearing on November 4, 2020, TDOT extended the time for receiving public comments until December 4, 2020, and prior to that deadline, TDOT did mail a notice of the proposed rulemaking, with a link to the public website where the rulemaking materials could be found, to all permit holders.

2. Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region), submitted the following general comments regarding the proposed rules:

   a. Mr. Rush asserts that TDOT did not follow the directive in T.C.A. § 54-21-111 to begin promulgating and enforcing the rules necessary to carry out the 2020 Act within sixty (60) days of its effective date, June 22, 2020, because the definition of "promulgate" means to "put into force and effect."

      Response: TDOT does not concur. T.C.A. § 54-21-111 directs TDOT, within 60 days of the effective date of the 2020 Act, to begin promulgating and enforcing rules as needed to enforce the 2020 Act and 23 U.S.C. § 131. The 2020 Act became effective on June 22, 2020. The TDOT Beautification Office began accepting and processing applications for outdoor advertising permits under the 2020 Act well within this 60-day timeframe. TDOT also complied with the directive to begin promulgating rules by filing the present Notice of Rulemaking Hearing with the Tennessee Secretary of State on August 21, 2020. This is the initial step to begin a lengthy public process to promulgate rules, which also includes holding a public hearing, receiving and considering public comments, preparing responses to the public comments, obtaining legal review from the Tennessee Attorney General's Office, submitting the final rules to the Tennessee Secretary of State, and presenting the rules to the Tennessee General

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Gasbarri, Real Estate Manager, Lamar Advertising Co. (Tri-Cities); Larry Quas, Real Estate Manager, Lamar Advertising Co. (Memphis); Michelle Millard, VP/General Manager, Lamar Advertising Co. (Memphis); Tim Willis, Real Estate Director/Operations Manager, Lamar Advertising Co. (Jackson); Cody Walker, Real Estate Manager, Lamar Advertising Co. (Clarksville); Jimmy Collins, VP/General Manager, Lamar Advertising Co. (Tri-Cities); Brian Conley, VP/General Manager, Lamar Advertising Co. (Knoxville); Charlie Furman, VP/Territory Manager, Lamar Advertising Co. (Nashville); Blake Allred, Real Estate Manager, Lamar Advertising Co. (Nashville); Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region); Robbie Robertson, Business Development Manager, The Plainview Group; David Hogue, Real Estate Manager, Outfront Media; Martin Daniel, Owner/Manager, Elevation Outdoor Advertising, LLC; and Scott Hibberts, General Manager, Reagan Outdoor Advertising of Chattanooga.

Assembly's Joint Government Operations Committee – all of which must be accomplished before the proposed rules can become effective. (See Title 4, Chapter 5, Part 2, of the Tennessee Code regarding rulemaking procedures under the Uniform Administrative Procedures Act.) Completing the promulgation of rules within 60 days would have been both a legal and a practical impossibility.

b. Mr. Rush asks why TDOT has chosen to do a complete rewrite and recodification of the rules "without providing any justification and analysis behind the proposed rules."

Response: To begin the promulgation of proposed rules, the Uniform Administrative Procedures Act ("UAPA") requires a state agency to file a notice of hearing with the Tennessee Secretary of State that provides: (1) A statement of the time and place at which the public hearing is to be held, and (2) the express terms of the rules being proposed. See T.C.A. § 4-5-203(c). It also requires the state agency to provide persons in attendance at the hearing with a copy of the rules in redline form to show how the proposed rules would change the existing rules. T.C.A. § 4-5-203(a)(1)(B). TDOT's notice of rulemaking fulfilled these requirements, and TDOT made a redline copy of the rules available on its public website and in paper form at the public hearing held on November 4, 2020. The UAPA does not require a state agency to provide a "justification and analysis behind the proposed rules" before the public hearing is held. The UAPA does require the state agency to provide a response to the comments submitted at the public hearing, including the reasons for the agency's adoption or rejection of any specific changes suggested in the comments, and this is filed with the Tennessee Secretary of State as part of the administrative rulemaking record. T.C.A. § 4-5-222(a).

c. Mr. Rush asks what justification TDOT has for incorporating T.C.A. verbiage verbatim into the proposed rules rather than referencing the T.C.A. sections and suggests that this will necessitate a rule revision every time the T.C.A. is changed.

Response: TDOT believes that incorporating applicable language from the Tennessee Code into the rules, and thereby compiling the applicable regulatory provisions into one document, will make it more convenient for interested parties to find, read, research, and understand the regulations. TDOT acknowledges that this may require technical amendments to the rules from time to time to keep them up to date with the applicable statutory provisions.

d. Mr. Rush offers a general comment that TDOT has proposed a "complete rewrite of the [rules] that isn't necessary and hasn't been justified by the Department, based on the minimal statutory changes the Legislature made in

2020 to cure the Constitutional issues the Department created in the Thomas Case."

Response: The proposed rules incorporate new or amended definitions and other provisions adopted in the 2020 Act and they also incorporate previous statutory revisions to the outdoor advertising code (Tennessee Code Title 54, Chapter 21) adopted prior to 2020 that were incorporated into the 2020 Act. The proposed rules also include some organizational changes, new illustrations, etc., intended to make the rules more understandable and easier to use.

3. Martin Daniel, Owner/Manager, Elevation Outdoor Advertising, LLC, submitted the following general comments regarding the proposed rules:

   a. Mr. Daniel requests that TDOT notify the "on-premise/business sign industry" of the proposed rules and seek comment from it.

      Response: TDOT agreed with this request and did receive comments from the International Sign Association (Alexandria, VA) and its regional affiliate, the Mid-South Sign Association (Winchester, TN), on behalf of on-premises sign manufacturers and users, as well as comments from individual companies in this industry, which are described below.

   b. At the public hearing, Mr. Daniel requested that TDOT come back to OAAT and others making comments to see if any points of disagreement can be worked out rather than going directly to the Government Operations Committee to have the controversy decided there.

      Response: Upon completing its review of the public comments and making modifications to the proposed rules in response to the comments, TDOT intends to file a new Notice of Public Rulemaking Hearing (a copy of which is attached hereto) to resubmit the proposed rules, as revised, for additional public review and comment.

Rule 1680-11-01-.01 – Preface.

Comment: OAAT asks whether the Preface should make reference to the Tennessee Constitution as well as the United States Constitution.

Response: TDOT accepts the request to make reference to the Tennessee Constitution in the Preface but believes an explanation is appropriate. The Preface states that the purpose of the proposed rules is to implement and enforce the Outdoor Advertising Control Act of 2020 "so as to provide for effective control of outdoor advertising devices . . . in accordance with and as required by 23 U.S.C. § 131 and 23 CFR Part 750, subject only to any limitations imposed by the United States Constitution as determined in the final judgment of a tribunal having jurisdiction over the matter."

In T.C.A. § 54-21-111, the Outdoor Advertising Control Act of 2020 directs TDOT to promulgate rules as necessary to carry out the provisions of the 2020 Act and 23 U.S.C. § 131, the latter of which codifies provisions of the Federal Highway Beautification Act of 1965. Under 23 U.S.C. § 131, and the Federal Highway Administration's implementing regulations in 23 CFR Part 750, the States are required to provide for "effective control" of outdoor advertising along the Interstate and Primary highway systems, subject to the withholding of 10% of a State's federal highway funds as a penalty for failure to provide for such effective control. As stated in the Preface, the ultimate purpose of TDOT's proposed rules in Chapter 1680-11-01 is to implement the 2020 Act in such a manner as to provide for the "effective control" of outdoor advertising in accordance with the requirements established in 23 U.S.C. § 131 and 23 CFR Part 750. The final clause in the Preface acknowledges that these requirements in federal law and regulations are subject to any limitations established in the United States Constitution as construed and determined by the courts. See, e.g., *Thomas v. Bright*, 937 F.3d 721 (6th Cir.), *cert. denied* (holding provisions of the Tennessee Billboard Regulation and Control Act of 1972, which corresponded exactly to provisions in 23 U.S.C. § 131, that created an exception from regulation for on-premises signs based on the content of the message displayed on the sign are unconstitutional under the First Amendment as applied to noncommercial speech).

It is not accurate, however, to cite the Tennessee Constitution, or any other state law, as a limitation on the requirements of federal law or regulations. The Supremacy Clause of the United States Constitution (Article VI, Clause 2) expressly provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Accordingly, TDOT does not believe it is appropriate to refer to the Tennessee Constitution as a limitation on the requirements for the effective control of outdoor advertising devices as established in federal law and regulations. However, TDOT recognizes that state laws and rules are subject to the Tennessee Constitution and therefore accepts the request to add an acknowledgement of this in the proposed rule, as follows:

> The Outdoor Advertising Control Act of 2020 and these regulations are subject to any applicable requirements of the Tennessee Constitution.

Rule 1680-11-01-.02 – Definitions.

1680-11-01-.02(1) "Abandoned outdoor advertising device"

Comments: OAAT expresses general concerns that the definition of "abandoned outdoor advertising device" is not found in the 2020 Act, is broad and ambiguous, and is not similar to legal definitions of "abandoned" or "abandoned property" which acknowledge that merely not using property for a period of time is not abandonment. OAAT also expresses a specific concern that classifying a device that "displays only a message of its availability for advertising purposes" as an

abandoned device, as provided in proposed subparagraph (c), is a content-based regulation contrary to the controlling law set forth in *Thomas v. Bright*.

Response: TDOT concurs in part. The definition of "abandoned outdoor advertising device" presented in the proposed rules is substantially the same as the existing definition in the current Rule 1680-03-02-.02(1), which has been in effect since 1989. The purpose of the definition is to identify devices that are subject to removal under Rule 1680-03-02-.07 [to be renumbered as Rule 1680-11-01-.07]. Providing a process for removing outdoor advertising devices or sign faces that remain in serious disrepair or damaged for a period of twelve (12) months, as provided in subparagraphs (a) and (b), serves the goal of 23 U.S.C. § 131(a) to "promote the safety and recreational value of public travel, and to preserve natural beauty." However, TDOT believes the classification of a device as being "in substantial need of repair" can be defined more objectively as "A device that remains in a damaged condition, which in the case of a wooden sign structure means that fifty percent (50%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports, or in the case of a metal sign structure that normal repair practices would call for replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support." TDOT agrees that the classification of abandoned devices based on the content of the message displayed on the device is problematic under *Thomas v. Bright*; therefore, the current subparagraph (c) will be modified to provide that a device will be identified as abandoned if it has a blank sign face for a period of twelve (12) months. The reason for revoking the permit(s) of a device that has been removed and not reconstructed in its permitted location, as provided in proposed subparagraph (d), is to help the TDOT Beautification Office maintain an accurate inventory of permitted devices and to open potentially permittable locations to other outdoor advertising firms.

1680-11-01-.02(21) "Nonconforming"

Comment: OAAT notes that the definition of "nonconforming" does not contain any reference to signs erected or modified during the period when TDOT suspended administration of the outdoor advertising regulations after the Sixth Circuit Court of Appeals ruling in *Thomas v. Bright* on September 11, 2019, until the 2020 Act became effective on June 22, 2020. OAAT suggests that including a reference to these signs in the definition would make it clear that these signs are eligible for a permit, either as conforming or nonconforming devices.

Response: TDOT does not believe any additional language is needed in the definition in order to accomplish this purpose. The definition of "nonconforming" in the proposed rule is identical to the definition stated in the 2020 Act. The purpose of the definition is to describe the criteria that will determine whether an outdoor advertising device is to be characterized as "conforming" or "nonconforming"

rather than to prescribe the process for applying these criteria to particular categories of devices. The 2020 Act does provide in T.C.A. §§ 54-21-104(a)(3) and (b)(2) that outdoor advertising devices erected or modified between September 11, 2019, and the effective date of the 2020 Act are required to obtain a permit and will be characterized as either a conforming or nonconforming device in accordance with the procedures established in T.C.A. § 54-21-104(b)(2). A similar process applies to previously permitted devices that were upgraded to a changeable message sign with a digital display during the same period. T.C.A. § 54-21-104(b)(3). The proposed rules address the processing of applications for devices erected or modified during this period, including the process for characterizing the devices as conforming or nonconforming for regulatory purposes, in Rule 1680-11-01-.04(2)(q) [to be renumbered as Rule 1680-11-01-.04(2)(s) in the revised rule], and the proposed rules address permit addendum requirements for digital upgrades made during this time period in Rule 1680-11-01-.04(3)(b).

1680-11-01-.02(23) "On-premises device"

Comments: TDOT received similar comments from Mr. Charles Stofel, President, Columbia Neon Co., Inc.; Mr. Russell Witt, President, Witt Sign Co., Inc.; Mr. Tom Flynn, President, Flynn Sign Co., Inc.; and Mr. Ben Doeden, Senior Territory Manager, Watchfire Signs, representing companies that manufacture or lease message center signs to businesses for on-premises advertising purposes, and from Mr. Kenneth Peskin, Director of Industry Programs, International Sign Association (ISA), on behalf of ISA and its regional affiliate, Mid-South Sign Association (headquartered in Winchester, TN). These commenters expressed concern that subparagraph (b) of the definition is too broad and could be construed to extend outdoor advertising regulations to devices that are only used to advertise the business on the property where the sign is located simply because the business leases the device from a sign company. Several of the commenters requested a modification of the definition to specify that the receipt of compensation would disqualify a sign as an "on-premises device" only if it is received from a third party or parties for the placement of messages on the sign.

Response: TDOT concurs with the recommended change. The definition of "on-premises device" in the proposed rule is identical to the definition in the 2020 Act. T.C.A. § 54-21-102(17). However, TDOT shares the commenters' concern that the provision limiting "on-premises devices" to signs "for which compensation is not being received" could be construed too broadly to disqualify a sign as an exempt on-premises device merely because the facility on which the sign is located pays a sign company to lease the use of the sign. Under the 2020 Act, a sign is categorized as a regulated "outdoor advertising device" based on the receipt of compensation only if the owner or operator of the sign earns compensation "directly or indirectly from a third party or parties for the placement of a message on the sign." T.C.A. § 54-21-102(18)(B). Upon reading these two definitions together, TDOT agrees that it would be more clearly consistent with the intent of the 2020 Act to disqualify a

sign as an "on-premises device" based on the compensation factor only if the owner of the sign or the facility that operates it is receiving compensation from a third party or parties to display messages on the sign. Accordingly, TDOT proposes to revise the rule to add a clarification in subparagraph (b) of the definition, as follows:

(23) "On-premises device" means a sign:

(a) . . .

(b) For which compensation is not being received and not intended to be received from a third party or parties for the placement of a message on the sign.

1680-11-01-.02(25) "Outdoor advertising device"

Comments:

1. OAAT comments generally that definitions included in the statute do not need to be included in the rules and should not be expanded in the rules. More specifically, OAAT requests a justification for adding the clause in subparagraph (b) stating that the definition of "outdoor advertising device" "does include any other sign not specifically exempted from regulation under the Act to the extent required under federal law" and examples of the types of devices that would be regulated under this additional language.

   Response: First, in response to OAAT's general comment, TDOT believes it is appropriate to incorporate statutory definitions and other statutory provisions into the rules so as to compile the applicable regulatory provisions into one document to make it easier for interested parties to find, read, research, and understand the regulations. TDOT also believes it is appropriate to supplement statutory definitions or other statutory provisions in the rules to make appropriate clarifications or to add details on how regulatory criteria are to be applied, so long as the additional language in the rules serves to implement the regulatory purpose of the statute and the applicable requirements of federal law. For example, as noted in response to comments regarding the definition of "on-premises device" in proposed Rule 1680-11-01-.02(23) (see above), TDOT believes it is appropriate to add language in the rule to supplement the statutory definition of "on-premises device" so as to reconcile that definition with the statutory definition of "outdoor advertising device" and thereby clarify that a sign otherwise meeting the criteria for an "on-premises device" is not disqualified merely because the owner/operator of the facility where the sign is located pays compensation to a sign company to lease the use of the sign. Similarly, Rule 1680-11-01.06, both in its current and proposed form, contains additional details on how to implement the basic criteria for identifying an "on-premises device" that supplement, but do not contradict, the basic criteria established in the statutory definition. OAAT itself has asked TDOT to add language in the rules to supplement statutory definitions or provisions. See, for example, OAAT's request to add language to the statutory definition of

"nonconforming" in proposed Rule 1680-11-01-.02(21) (discussed above); see also, with respect to the provision in Rule 1680-11-01-.03(1)(d)1.(i) allowing outdoor advertising devices to be spaced closer than 1,000 feet apart along interstate and other controlled access highways where the devices "are separated by buildings or other obstructions, so that only one (1) device is visible from the highway at any one (1) time" where OAAT requests TDOT to substitute the term "main traveled way" for the statutorily specified term "highway" (see discussion below).

With respect to OAAT's specific comment regarding the definition of "outdoor advertising device" in subparagraph (b), TDOT believes the added language is consistent with the 2020 Act and provides a needed clarification of the required scope of regulation under the 2020 Act and federal law. The purpose of defining the term "outdoor advertising device" is to identify the categories of signs that are subject to regulation under the 2020 Act. Section 54-21-103(a) of the 2020 Act generally provides that "outdoor advertising devices" are prohibited within 660 feet of the nearest edge of right-of-way and visible from the main traveled way of interstate or primary highways in Tennessee, but it authorizes such devices to be permitted in areas that are zoned commercial or industrial, or in unzoned commercial or industrial areas, if the devices meet the size, lighting, and spacing regulations established by agreement between the State of Tennessee and the U.S. Secretary of Transportation (the terms of which are set forth, in part, in T.C.A. § 54-21-113). See T.C.A. § 54-21-103(a). The categories of signs that are not subject to regulation as "outdoor advertising devices" are specifically identified in T.C.A. § 54-21-103(b), and these include: (1) official signs and notices, including "directional signs"; (2) "on-premises devices"; (3) signs other than outdoor advertising devices having a sign face that does not exceed 20 square feet and do not contain any flashing, intermittent, or moving parts; (4) landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR § 750.710; and (5) "utility signs".[2] There are no other categories of signs that are exempt from regulation under the 2020 Act. Any sign that does not fit within one of these specific categories of exempted signs must fall into a category of signs (outdoor advertising devices) that is subject to regulation under the applicable zoning, size, lighting, and spacing rules. The clause added to subparagraph (b) in the proposed rule simply makes it clear that signs are subject to regulation as "outdoor advertising devices" if they do not fit within one of the categories of signs specifically exempted from regulation under the 2020 Act as provided in T.C.A. § 54-21-103(b).

[2] The exempted categories of signs identified in quotation marks are specifically defined in the 2020 Act. See T.C.A. § 54-21-102 at paragraphs (10) ("directional sign"), (17) ("on-premises device"), and (26) ("utility signs"). While the term "official signs and notices" is not defined in the 2020 Act, it is defined in the current rules (with no substantive change in the proposed rules), and the definition is derived verbatim from the Federal Highway Administration rule at 23 CFR § 750.153(n).

The 2020 Act does define "outdoor advertising device" to include any sign that is owned or operated to earn compensation directly or indirectly from a third party or parties for the placement of messages on the sign. T.C.A. § 54-21-102(18)(A). It does not follow, however, that these are the only types of signs subject to regulation as outdoor advertising devices. If the only test to determine whether a sign is subject to regulation as an "outdoor advertising device" is whether the owner or operator is receiving compensation from third parties to display messages, there would be no reason to identify categories of signs that are exempted from regulation on any basis other than the fact that the signs are not operated to receive compensation from third parties. But that is not how the 2020 Act is structured. For example, the 2020 Act exempts "on-premises devices" from regulation. By definition, an "on-premises device" is a sign that is not operated to receive compensation; however, the lack of compensation is not the only defining characteristic of an "on-premises device". To qualify for the "on-premises device" exemption the sign must also be "located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the facility that owns or operates the sign or within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located." T.C.A. § 54-21-102(17)(A). Further, to qualify as a "facility" upon which a qualifying "on-premises device" may be located, it must be "a commercial or industrial facility, or other facility open to the public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas," etc. T.C.A. § 54-21-102(12). Any sign located more than 50 feet away from, or not on the same side of highway as, a "facility" cannot qualify as an exempted "on-premises device" irrespective of whether the sign is being operated to receive compensation from third parties. As another example, a sign other than an outdoor advertising device[3] with a sign face that does not exceed 20 square feet in total area and does not contain any flashing, intermittent, or moving lights is exempted from regulation. T.C.A. § 54-21-103(b)(3). This necessarily implies that a sign with a sign face that <u>does</u> exceed 20 square feet, or that does contain flashing, intermittent, or moving lights, is <u>not</u> exempted from regulation, irrespective of whether the sign is being operated to receive compensation from third parties.[4] Otherwise, the stated limitations for these exemptions would be rendered meaningless.

Finally, the 2020 Act and TDOT's responsibility to promulgate rules to implement the 2020 Act must be construed in light of its purpose to achieve effective control of outdoor advertising in accordance with federal law. See

[3] Any sign that is operated to receive compensation from third parties for the display of messages on the sign is by definition an "outdoor advertising device" subject to regulation irrespective of the size of the sign.
[4] However, it is possible the sign could qualify for an exemption as an "on-premises device" or "utility sign" or under some other exemption.

T.C.A. § 54-21-111 (directing TDOT to promulgate rules as necessary to carry out the provisions of the 2020 Act and 23 U.S.C. § 131). Under 23 U.S.C. § 131, the States are required to provide for "effective control" of outdoor advertising along the interstate and primary highway systems, subject to the withholding of 10% of a State's federal highway funds as a penalty for failure to provide for such effective control. 23 U.S.C. § 131(b). "Effective control" means generally that the only types of signs allowed within 660 feet of the right-of-way and visible from the main traveled way of highways on the interstate or primary system[5] are: (1) directional and official signs and notices; (2) signs advertising the sale or lease of property upon which they are located; (3) signs advertising activities conducted on the property on which they are located; (4) landmark signs lawfully in existence on October 22, 1965; and (5) signs advertising the distribution of free coffee by nonprofit organizations. 23 U.S.C. § 131(c). Otherwise, the only signs that are permissible within the regulated area adjacent to an interstate or primary highway are signs located in areas zoned commercial or industrial, or in unzoned commercial or industrial areas, and erected in a manner consistent with the size, lighting, and spacing rules established by agreement between the State and the U.S. Secretary of Transportation. 23 U.S.C. § 131(d). If a sign does not fall within one of the limited categories of exempted signs under 23 U.S.C. § 131(b), it can only be permitted in commercial or industrial areas in accordance with the size, lighting, and spacing standards adopted under 23 U.S.C. § 131(d). Likewise, under the 2020 Act, if a sign does not fall within one of the limited categories of exempted signs under T.C.A. § 54-21-103(b), it can only be permitted in commercial or industrial areas as authorized under T.C.A. § 54-21-103(a).

The parallel structure between 23 U.S.C. § 131 and the 2020 Act is obvious and intentional. However, under the ruling of the Sixth Circuit Court of Appeals in *Thomas v. Bright*, any regulation of signs, or exemption from regulation, based on the content of the message displayed on the sign is constitutionally suspect, and accordingly the 2020 Act redefines the limited categories of signs that are exempt from regulation in a content-neutral manner, as shown in the following table:

[5] After July 1, 1975, signs erected beyond 660 feet of the right-of-way and outside of an urban area are also subject to the same limitations for effective control if the sign is erected with the purpose of having its message being read from the main traveled way. 23 U.S.C. § 131(c).

23 U.S.C. § 131(b) exemptions	T.C.A. § 54-21-103(b) exemptions
Directional and official signs and notices	Official signs and notices, including directional signs[6]
	Utility signs[7]
Signs advertising activities conducted on the property on which they are located	On-premises devices (defined by the sign's location adjacent to a "facility" rather than by the content of the message)
Signs advertising the sale or lease of property upon which they are located	Signs having a sign face that does not exceed 20 square feet and do not contain flashing, intermittent, or moving lights
Landmark signs	Landmark signs
Signs advertising the distribution of free coffee by nonprofit organizations[8]	

Outside of these limited categories of signs that are exempt from regulation, no signs may be allowed within the regulated area adjacent to the interstate and primary highway system except for permitted outdoor advertising devices that are located in areas zoned commercial or industrial, or in unzoned commercial or industrial areas, that meet the size, lighting, and spacing standards established by agreement between the State and the U.S. Secretary of Transportation. Thus, signs that do not fit within one of the limited categories of exempted signs must be regulated as outdoor advertising devices. This is precisely what the added language in subparagraph (b) says. However, the proposed rule will be revised to add a specific citation to the relevant provision

[6] Under the 2020 Act, unlike 23 U.S.C. § 131(b), directional signs for sites, attractions, or activities are limited to official signs. See T.C.A. § 54-21-102(10) (defining "directional sign" as an official sign that gives directional information regarding an identified site, attraction, or activity) and T.C.A. § 54-21-103(b)(1) (providing that official signs and notices, including directional signs, are exempt from regulation as outdoor advertising devices).

[7] 23 U.S.C. § 131(b) does not directly identify an exemption for utility warning signs. However, under 23 CRF § 750.103, public utility signs intended to warn or inform the traveling public are defined as a category of directional and official signs and notices. Unlike the other exempted categories of signs under the 2020 Act, the exemption for utility signs is based on the content of the message. However, because utility signs are warning signs erected for operational and public safety purposes, it is anticipated that this exemption will satisfy constitutional standards for regulation based on content.

[8] This exemption is not included in the 2020 Act, nor was it included as an exemption under the Billboard Regulation and Control Act of 1972. In any event, the exemption is based on the content of the message and is constitutionally suspect under the *Thomas v. Bright* case.

of the 2020 Act in T.C.A. § 54-21-103 rather than a general reference to federal law.

2. At the public rulemaking hearing, Ms. Marge Davis, President, Scenic Tennessee, expressed support for the added language in subparagraph (b) of the definition of "outdoor advertising device".

   Response: TDOT appreciates the expression of support.

3. At the public rulemaking hearing, Mr. Gary Douglas asked whether the proposed rules allow for a third category of signs that are neither on-premises devices nor off-premises devices, e.g., signs that express political speech where no compensation has been exchanged for displaying the speech, and if so whether such signs would be regulated.

   Response: The proposed rules, like the 2020 Act, provide for the regulation of "outdoor advertising devices" (the 2020 Act contains no reference to "off-premises devices"). In addition, the 2020 Act and the proposed rules allow exemptions from regulation for "on-premises devices" and certain other limited categories of signs. There is no exemption in the 2020 Act or the proposed rules for "political signs" or any other category of signs based on the content of the message displayed on the sign (except in the special case of "utility signs" used to warn and inform the traveling public and "directional signs" as a subcategory of "official signs and notices"). There is an exemption, however, for small signs having a sign face that does not exceed 20 square feet, so long as the signs do not contain any flashing, intermittent, or moving lights and are not operated to receive compensation for the display of messages. Yard signs commonly used to display political speech or other types of messages will likely fall within this exception.

1680-11-01-.02(31) "Sign"

Comments: OAAT again comments that definitions found in the statute do not need to be included in the rules and asks the intent of the added clause in the proposed rule stating that "a building or structure having a primary function at its location other than to advertise or inform will not be considered a 'sign' solely because words or figures, etc., are displayed on its exterior surface, unless the owner or operator is earning compensation directly or indirectly from a third party or parties for the placement of any message on the exterior of the building or structure, and provided that this exception shall not apply to any separate sign structure or sign face that is attached to the building or structure."

Response: Again, for reasons previously stated, TDOT believes it is appropriate and helpful to include statutory definitions and provisions in the rules. The intent of the clause added to the statutory definition of "sign" is to clarify that a building

or structure that has a primary function other than outdoor advertising will not be treated as an outdoor advertising device merely because words or figures of some kind may be displayed on its exterior surface. Two very common examples of this are water towers and barns. Water towers are located where they are to serve utility customers; barns are located where they are to shelter livestock, equipment, etc. Water towers typically contain the name of the city where they are located and sometimes a municipal slogan or the like. Barns often contain the name of the farm or provide other information about farm products or the like. In the past, displays of this kind on such buildings or structures would have been treated as on-premises advertising based on content of the message to advertise activities conducted on the property. Under the 2020 Act, however, the exemption for on-premises devices is based on their location adjacent to a "facility" open to the public on a regular schedule, not the content of the message on the sign. A typical water tower or barn would not qualify as a "facility" open to the public on a regular schedule. However, TDOT does not believe it is the intent of the 2020 Act, or of 23 U.S.C. § 131, to regulate functioning water towers and barns or the like as outdoor advertising devices except in cases where the owner also operates it as an outdoor advertising device by selling advertising space to another party. In any event, TDOT has no practical ability to regulate the size, lighting, or spacing of water towers, barns, or similar buildings or structures that have a primary function other than outdoor advertising but may happen to display words or figures of some kind on their exterior surfaces.[9] Accordingly, TDOT believes it is appropriate to add the proposed clarification to the definition of "sign" to explain why these types of buildings or structures are not regulated but to do so in a way that does not depend on the content of any words or figures displayed on the buildings or structures. However, the exclusion of such buildings or structures from the definition of "sign" does not apply to any separate sign structure or sign face erected on or adjacent to these buildings or structures. These would be considered "signs" subject to regulation as outdoor advertising devices unless they fall under one of the exemptions identified in T.C.A. § 54-21-103(b).

1680-11-01-.02(32) "Sign face"

Comments: OAAT notes that this definition is not included in the statute. Also, upon reading the proposed definition together with the proposed illustrations in the appendix, OAAT requests a reasonable compromise to allow for advertising

[9] It should be noted, however, that if a building or structure that is not normally used for outdoor advertising purposes is actually being used in a particular location to function primarily as a means to advertise or inform rather than for its normally intended purpose, then it would be characterized as a "sign" subject to regulation as an outdoor advertising device unless it meets one of the statutory exceptions. An example would be a prefabricated swimming pool that, instead of being filled with water and functioning as a pool, is turned on its side in a field adjacent to the highway right-of-way and used to display a written message of some kind. Another example would be an otherwise unused semi-trailer parked adjacent to the highway right-of-way with a message draped over its side. Many more examples could be given but it would be impossible to provide an exhaustive list.

embellishments extending beyond the normal sign face without including all embellishments and the sign face together in a single measurement of a square, rectangle, or circle.

Response: Although the term "sign face" is not defined in the 2020 Act, it is used in the 2020 Act [see, e.g., T.C.A. § 54-21-103(b)(3)(A)], and therefore TDOT believes it is appropriate to define the term in the rules. TDOT agrees that the definition can be modified to allow a reasonable accommodation for advertising embellishments outside the normal sign face so long as the total area in which advertising is displayed does not exceed the maximum size allowed for a permitted outdoor advertising device. Accordingly, TDOT proposes to revise the rule to define "sign face" as follows:

> "Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, taken as the smallest single measurement of a square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. (See illustration in Rule 1680-11-01-.10, Appendix.)

1680-11-01-.02(37) "Visible"

Comments: OAAT again comments that it is not necessary to include statutory definitions in the rules. OAAT acknowledges that the definition in the statute is copied from federal law but asserts that the definition is vague and states its intent to continue making legislative efforts to modify the definition.

Response: Again, for reasons previously stated, TDOT believes it is appropriate and helpful to include statutory definitions and provisions in the rules. TDOT will respond to any legislative efforts to modify the statutory definition of "visible" at the appropriate time in the legislative process.

1680-11-01-.02(38) "Void"

Comments: OAAT expresses support for the concept that a permit can be voidable but requests that the definition of "void" be removed as unnecessary because the law sets out a clear process for voiding permits.

Response: TDOT accepts that the definition of "void" can be deleted without harm to the implementation of these rules.

Rule 1680-11-01-.03 – Criteria for Erection and Control of Outdoor Advertising Devices.

1680-11-01-.03(1)(b)3. – Size; measurement of sign face

Comments: OAAT questions the intent of stating that the area of a sign shall be measured by the smallest "single measurement of a" square, rectangle, or circle" and expresses concern about the impact this might have to limit advertising embellishments that sometimes extend beyond the normal sign face.

Response: As noted in the response to OAAT's comments on the definition of "sign face" above, TDOT believes that it is reasonable to make an accommodation for advertising embellishments outside the normal sign face so long as the total area in which advertising is displayed does not exceed the maximum size for permitted outdoor advertising devices. Accordingly, TDOT proposes to revise this part of the rule to state as follows:

> The area of the sign face shall be measured by the smallest single measurement of a square, rectangle, triangle, or circle, or combination thereof, that will encompass the entire area of the sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, taken as the smallest single measurement of a square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. In the case of stacked devices or double-faced signs, the total display area of the device will be determined by combining the area of each sign face, taken as the smallest single measurement of a square, rectangle, triangle, or circle, or combination thereof, including the border and trim and the area of any advertising embellishment outside the border and trim but excluding any airspace between the sign faces. (See illustrations in Rule 1680-11-01-.10, Appendix.)

1680-11-01-.03(1)(d)1.(i) – Spacing; visibility exception to minimum spacing

Comments: Concerning the minimum spacing exception clause in this subpart providing "that outdoor advertising devices may be spaced closer together where they are separated by buildings or other obstructions, so that only one (1) device is visible from the highway at anyone (1) time," OAAT requests use of the defined term "main traveled way" instead of "highway" to clarify the location from which the visibility of the devices is to be determined.

Response: TDOT agrees that a modification of this spacing exception to determine the visibility of outdoor advertising devices from the "main traveled way" of the highway is appropriate. The proposed rule's use of the word "highway" rather than "main traveled way" comes directly from the 2020 Act. Specifically, T.C.A. § 54-21-113(b) authorizes an exception from the minimum spacing of 1,000 feet for devices located along an interstate or other controlled access highway "where the same are not separated by buildings or other obstructions, so that only one (1)

outdoor advertising device is visible from the highway at any one (1) time." (Emphasis added.) However, TDOT agrees that it is appropriate to supplement the statutory language by adding the term "main traveled way" so as to clarify the location on the highway from which the visibility of outdoor advertising devices is to be determined for the purpose of applying this minimum spacing exception. The current rule uses the term "main traveled way" to describe how this spacing exception is to be applied [see Rule 1680-02-03-.03(1)(a)4.(iii)], and TDOT believes using the term "main traveled way" is consistent with federal law. See 23 U.S.C. § 131(b) (requiring States to provide for effective control of outdoor advertising devices "which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system"). Accordingly, TDOT will revise this subpart of the proposed rule to state as follows:

> No two outdoor advertising devices shall be spaced less than 1,000 feet apart on thesame side of a highway on the interstate system or a controlled access highway on the primary system; provided, however, that outdoor advertising devices may be spaced closer together where they are separated by buildings or other obstructions, so that only one (1) outdoor advertising device is visible from the main traveled way of the highway at any one (1) time. (See illustration in Rule 1680-11-01-.10, Appendix.)

1680-11-01-.03(1)(d)1.(ii) – Spacing; minimum spacing from interchanges

Comments: With respect to the provision in this subpart prohibiting outdoor advertising devices within 1,000 feet of an interchange of an interstate or other controlled access highway located outside of an incorporated municipality, Mr. Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region), objects to the additional clause providing that the same prohibition applies outside the urban services district in counties having a metropolitan form of government. In addition, Mr. Rush requests, because of the increased use of acceleration/deceleration lanes on controlled access highways, that the distance from the interchange be measured from the gore instead of the beginning or ending of pavement widening, as provided in the current rule.

Response: TDOT declines to delete the provision in the current rule that prohibits outdoor advertising devices within 1,000 feet of an interchange in areas outside of the urban services district in counties having a metropolitan form of government. While state law authorizes the consolidation of city and county governments into a combined metropolitan form, per T.C.A. § 7-1-102, the law also continues to recognize a distinction between the general services district, which is coextensive with the total area of the county, and the urban services district, which encompasses the area of the principal city and, if ratified by the voters, the areas of other smaller incorporated municipalities located within the county. T.C.A. § 7-2-108(5). The metropolitan government is obligated to remove from the urban services district

any areas of the former principal city where it will not be able to provide the higher level of urban services, T.C.A. § 7-2-108(a)(5), but it is also authorized to expand the urban services district by annexation whenever areas within the general services district if the need for urban services arises. T.C.A. § 7-2-108(a)(6). The level of taxation for the general services districts and urban services districts varies according to the level of services provided, T.C.A. §§ 7-2-108(a)(7)-(10); and for the purpose of levying taxes, the urban services district is constituted as a municipal corporation. T.C.A. § 7-2-108(a)(15). Further, when state or federal financial aid is distributed to any incorporated municipality based on population or area, such aid is distributed to a metropolitan government based on the population or area of the urban services district, not the entire area of the county. T.C.A. § 7-3-102(b)(4). When such financial aid is distributed to any county on the basis of rural area, rural road mileage, or rural population, such aid is distributed to a metropolitan government based on the area, population, or road mileage of the area outside the urban services district. T.C.A. § 7-3-102(b)(3). Thus, state law does not treat the entire area of a metropolitan government as the equivalent of an incorporated municipality but instead continues to recognize a distinction between the more urbanized areas within an urban services district and the more rural character of the area outside the urban services district. Accordingly, for the purposes of controlling outdoor advertising in counties having a metropolitan form of government, TDOT has treated the urban services district in the same manner as an incorporated municipality while the areas outside of the urban services district are treated in the same manner as areas outside an incorporated municipality. This practice has been formalized in TDOT's rules since 1989. The Tennessee Attorney General's Office has issued legal opinions affirming the validity of TDOT's practice, see, e.g., Tenn. Op. Atty. Gen. No. 83-309 (WL 167169), and the application of the rule has been upheld upon judicial review. *RTM Media, LLC, et al. v. Tennessee Department of Transportation*, Davidson County Chancery Court, No. 08-973-I (Order Affirming Administrative Decision, 11/16/2009).

TDOT also declines, for public safety reasons, to adopt the request to revise the rule to measure the minimum distance from the interchange from the gore instead of the beginning or ending of pavement widening. In general, interstate highways and other controlled access highways on the primary system will have higher speed limits in the more rural areas outside of incorporated municipalities or the urban services district in counties with a metropolitan government. Drivers approaching an exit or entering onto the highway will need a greater distance within which to make complex decisions and driving maneuvers to change lanes near an exit or to merge into traffic. On highways with speeds exceeding 55 mph, the Manual on Uniform Traffic Control Devices directs the placement of advance warning signs at distances of 1,000 feet or more from the exit. The distance between pavement widening and the gore ranges from 400 to 600 feet for single-lane exits and is generally more than 1,000 feet for exits with more than one lane. Permitting billboards within 1,000 feet of the gore would allow additional visual distractions

into the area of highway exits and entrances intended for the placement of warning signs and performance of driving maneuvers.

1680-11-01-.03(1)(e)1.(ii) – Control of Original Conforming Devices

Comments: Mr. Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region), requests an addition to the proposed rule requiring the TDOT Beautification Office to respond to a permit holder's request to rebuild, reconstruct, or upgrade an original conforming device within 60 days (or some other specified time) and providing that the request will be deemed to be approved if no objection is made within the specified time.

Response: TDOT declines to adopt the suggested addition to the proposed rule. The purpose of requiring notice and authorization from the Beautification Office before reconstructing or upgrading an original conforming device is to confirm that the proposed reconstruction or upgrade will comply with the applicable location, size, and spacing requirements, etc., so that the device can maintain its status as an original conforming device. If the device is not reconstructed or upgraded in compliance with the rules that apply to it as an original conforming device, it will become an illegal device with a voidable permit and subject to removal. Once the permit is voided, no other device can be permitted at that location as an original conforming device. The action or inaction of the Beautification Office cannot render a device compliant with the law and rules if it is not compliant in fact. However, TDOT can accept a modification to the rule to provide a timeline for reviewing a request to reconstruct or upgrade an original conforming device, which will be expressed in a new part as follows:

> The Beautification Office shall use its best efforts to review and respond to a request to rebuild, reconstruct, or upgrade an original conforming device within no greater than sixty (60) days after the request is received. If a response cannot be provided within sixty (60) days after receipt of the request, the Beautification Office shall contact the requester prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to review the request.

Rule 1680-11-01-.04 – Permits, Renewals, and Administrative Hearings.

1680-11-01-.04(1)(a) – Application Requirements for New Outdoor Advertising Device Permits; general statement of permit requirement

Comments: OAAT requests modification of a provision in the current rule stating that "An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner" on the ground that this does not take into account a situation where an on-premises device is found to have spacing for an outdoor advertising device and the

owner wants to transition it to a permitted outdoor advertising device without removing the sign or sign face just to be able to obtain a permit.

Response: TDOT does not concur with the requested modification of the current rule. The 2020 Act expressly mandates in T.C.A. § 54-21-104(a) that no person shall "construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising device within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag." In turn, T.C.A. § 54-21-105(a) expressly states that "Any owner of any outdoor advertising device who has failed to act in accordance with § 54-21-104 must remove the outdoor advertising device immediately," and that "Failure to remove the outdoor advertising device renders the outdoor advertising device a public nuisance and subject to immediate disposal, removal, or destruction." If the owner does not immediately remove the illegal outdoor advertising device, TDOT has authority to remove the device and the owner is liable to TDOT for three (3) times the cost of removal and other penalties, as provided in T.C.A. § 54-21-105(b). The language in the current rule stating that an outdoor advertising device erected without a permit shall be considered illegal and subject to removal simply reiterates what the statute itself requires.

The rule as currently worded does not prevent the transition of a legal on-premises device to a permitted outdoor advertising device. A sign that meets the criteria for an on-premises device is not an outdoor advertising device and is not required to have a permit from TDOT. If the owner of the on-premises device believes that the device meets the spacing and other criteria for an outdoor advertising device, the owner may submit an application for a permit and, if granted, the owner may then begin operating the sign as an outdoor advertising device. There is no provision in the rules that requires the owner of a legal on-premises device to take the sign face off the sign before obtaining a permit to operate the sign as an outdoor advertising device. However, if the owner begins operating an on-premises device as an outdoor advertising device before obtaining the required permit from TDOT, the sign will be considered illegal and subject to enforcement action under T.C.A. § 54-21-105. Similarly, if a person erects a sign in a location that does not qualify for treatment as an on-premises device (and it does not meet any other exception from regulation), the sign is an outdoor advertising device that requires a permit before it can be lawfully operated as such. If the sign owner nevertheless erects the outdoor advertising device without first obtaining the required permit, the device is illegal and subject to removal at the owner's expense as provided in T.C.A. § 54-21-105, just as the current rule says.

1680-11-01-.04(1)(d)3.(i)(II) and 1680-11-01-.04(1)(d)3.(ii)(II) – Application Requirements for New Outdoor Advertising Device Permits – Affidavit from Property Owner

Comments: Under this part of the rule, the applicant for a permit is required to submit an affidavit from the property owner to attest either that the applicant owns or has an easement in the property where the device is to be located or that the property owner has given the applicant permission to construct and operate the device on the property. The applicant is required to attach a copy of the property owner's most recent property record in the Assessor of Property office where the property is located. The proposed rule would also specify that the name of the landowner on the application "must match the landowner's name on the affidavit exactly as the name on the property record card." OAAT notes that in some cases the property card includes the name of a partnership or an LLC but the name on the affidavit may only be a partner or a person authorized by the owner and expresses concern that getting the property record changed to match the affidavit will delay processing of the application. OAAT requests that the proposed language be modified to state that the property owner's name on the affidavit must be "substantially similar" to the property owner's name on the property record in the Assessor's office.

Response: TDOT does not accept the requested modification of the proposed rule. The proposed rule requires that the name of the landowner as identified in the affidavit must match the name of the landowner as identified in the most recent property record in the Assessor of Property's Office. It does not say that the name of the person signing the affidavit must necessarily match the name of the landowner identified in the property record. As OAAT notes, the property card may identify the owner as a partnership or an LLC, while the property owner's affidavit may be signed only by a partner or a person authorized to sign on behalf of the limited liability company or corporation. Thus, if the property record identifies the landowner as "ABC Partners" or "XYZ, Inc." the affidavit must identify the name of the landowner as "ABC Partners" or "XYZ, Inc." even though the signer of the affidavit may be partner A, B, or C, or President X. Wyand Zee of XYZ, Inc.

1680-11-01-.04(2)(a)-(e) – Processing of Applications; incomplete applications

Comments: OAAT proposes a modification of these subparagraphs in the current rule to give the applicant an opportunity within a specified timeframe to cure an incomplete application before returning it and also an express right to appeal the rejection of an application to determine whether it was rejected in accordance with the rules.

Response: TDOT accepts the request to modify the current rule to provide an opportunity to complete or correct an incomplete or defective application and will also revise the rule to set out the timeframe within which TDOT will process a completed application, in accordance with provisions of the 2020 Act in T.C.A. §

54-21-104(b)(1). Accordingly, proposed Rule 1680-11-01-.04(2) will be revised to add new subparagraphs (b) and (g), as follows:

(b) If the application is incomplete or defective on its face, the Beautification Office shall notify the applicant regarding the application's incomplete or defective status within no later than fifteen (15) days after receipt of the filed application. The notice shall indicate the information or documentation that is needed to complete or correct the application. The notice shall give the applicant a deadline of fifteen (15) days after the date the written notice is sent, or to the end of the next regular business day if the fifteenth (15^{th}) day falls on a weekend or official state holiday, within which to complete or correct the filed application. If the applicant fails to complete or correct the application by the established deadline, the application shall be considered incomplete and shall be returned without further processing, as provided below. The applicant shall be responsible for verifying that the entire application package is accurate and complete, notwithstanding any action or omission by the Department, and the applicant shall not be given a second opportunity to complete or correct the application. This shall not be construed to prevent the applicant from submitting a subsequent application for a permit at the same location.

. . .

(g) The Beautification Office will use its best efforts to process an application, in accordance with these rules, within no greater than sixty (60) days after receipt of a complete application. If a decision either to issue or deny the permit cannot be made within sixty (60) days, the Beautification Office will contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

TDOT declines to adopt the requested modification of the rule to provide an express right to appeal the return of an incomplete application, for the reasons stated in response to OAAT's comment regarding Rule 1680-11-01-.04(8)(e), Administrative Hearings, below.

1680-11-01-.04(2)(q)1. – Processing of Applications; application fee for devices not subject to regulation when erected

Comments: OAAT requests a specific reference to the code section establishing the lower initial application fee (currently $70) for devices that were not subject to regulation by TDOT when erected but are subsequently brought under regulation.

Response: TDOT agrees that a more specific citation of the applicable code section is appropriate. Accordingly, this subparagraph [to be renumbered as 1680-11-01-.04(2)(s)] and part will be modified in the proposed rule, as follows:

(s) If an outdoor advertising device was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation, the Department shall process the application as provided in T.C.A. § 54-21-104(b)(2).
1. The application must be accompanied by payment of the application fee set in T.C.A. § 54-21-104(b)(2)(C).

1680-11-01-.04(2)(q)3.(i)-(iv) – Processing of Applications; grounds for denial of a permit for devices not subject to regulation when erected

Comments: OAAT notes that the proposed rule states in subpart (q)3.(iii) that a permit may be denied if "The applicant for the permit is subject to enforcement action under T.C.A. § 54-21-105" while the statute provides more specifically that the permit may be denied if the applicant "is subject to an enforcement action under T.C.A. § 54-21-105(c)."

Response: TDOT acknowledges that the more specific statutory citation is correct, and accordingly this subpart of the proposed rule [to be renumbered as 1680-11-01-.04(2)(s)3.(iii)] will be revised to state as follows:

(iii)The applicant for the permit is subject to enforcement action under T.C.A. § 54-21-105(c); or

1680-11-01-.04(2)(q)4. – Processing of Applications; opportunity to cure any ground for denial of a permit for devices not subject to regulation when erected

Comments: OAAT again comments that it is not necessary to restate statutory provisions in the rules, but also requests TDOT to supplement the statutory provision to determine how much time is a reasonable amount of time to cure a violation that would be a ground for denying a permit.

Response: Again, for reasons previously stated, TDOT believes it is appropriate and helpful to include statutory provisions in the rules. TDOT acknowledges that what is a "reasonable amount of time" to cure a violation, as stated in the statute, will depend on the circumstances in each particular case. However, TDOT concurs that it is appropriate to supplement the statutory provision to provide a more specific process for determining what is a reasonable amount of time and would propose to use the notice of enforcement provisions in T.C.A. § 54-21-105(b) as a guide. Accordingly, this part of the rule [to be renumbered as 1680-11-01-.04(2)(s)4.] will be revised to provide as follows:

4. If the Department determines that the permit should be denied on any of the grounds provided in Part 3 above, the Department will proceed as follows:
(i) Before denying the permit, the Department shall notify the applicant in writing of the violation or circumstance that prevents issuance of the permit. The notice shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure the violation. At

a minimum, the notice shall state that the applicant has forty-five (45) days within which to complete the remedial action or to request an administrative hearing to contest the proposed denial.

(ii) Upon written request of the applicant, and for good cause shown, the Department may extend the time for completing the remedial action for up to an additional one hundred fifty (150) days, which may be made subject to the condition that the applicant remove all advertising content from the device.

(iii) If the applicant cures the violation, the Department shall issue the permit, but if the applicant fails to cure the violation, the Department shall deny the permit.

1680-11-01-.04(4)(b) - Requirements for Construction of a Permitted Outdoor Advertising Device; dimensions of sign face on permitted device

Comments: With respect to this provision in the current rule stating that the dimensions of the sign face of the permitted device, as built, must conform to the dimensions proposed in the application, OAAT requests that the subparagraph be deleted or modified to allow the permit holder to adjust to market conditions by constructing a sign face that is smaller than the proposed sign face in the application.

Response: TDOT accepts the request to revise the current rule; accordingly, this subparagraph (b) will be revised in the rule to provide as follows:

> The dimensions of the sign face on the outdoor advertising device, as built, must conform to the dimensions of the proposed sign face as described in the approved application; provided, however, that upon providing prior written notice thereof to the Headquarters Beautification Office the permittee may construct a sign face with dimensions that are smaller than the dimensions described in the approved application so long as the constructed sign face is at least twenty square feet (20 sq. ft.) in total area and both the sign face and the tag affixed to the device will be visible to the main traveled way of the highway. If the permit holder does not construct the sign face in accordance with the approved application or as modified in accordance with this subparagraph, the permit shall be voidable.

1680-11-01-.04(6)(a)-(b) – Voiding of Permits

Comments: OAAT requests a modification of the provisions relating to the voiding of permits in these subparagraphs to include a reference to the enforcement procedures established in T.C.A. § 54-21-105.

Response: TDOT concurs that this subparagraph of the rule should be amended to reflect the current provisions of T.C.A. § 54-21-105; accordingly, subparagraph(b) will be revised in the rule to provide as follows:

> In the event the Department deems a permit voidable under these rules, the Department shall give notice either by certified mail or other form of return receipt mail or by personal service to the permit holder; provided, however, that notice shall be deemed effective if the permit holder refuses to accept delivery of the certified mail or other return receipt mail. Such notice shall identify the alleged violation that renders the permit voidable; specify the remedial action, if any, which is required to correct the violation; and advise that failure to complete the remedial action within forty-five (45) days or to request a hearing to contest the alleged violation within forty-five (45) days will result in the permit becoming void, the right to a hearing waived, and the outdoor advertising device subject to removal and other enforcement action under T.C.A. § 54-21-105.

1680-11-01-.04(8)(e) – Administrative Hearings

Comments: OAAT requests modification of the current rule to provide a process to appeal the return of an incomplete application for a permit.

Response: TDOT declines to adopt the requested modification of the rule. The return of an application, along with the application fee and any other accompanying materials, without processing is neither a grant or denial of a permit and is not a final administrative action subject to appeal. The applicant remains free to submit a subsequent application for a permit at the same location. Creating an appeal right for the return of an unprocessed application would not only block that location from being permitted to another applicant while the appeal is pending, it would also prevent another applicant from obtaining a permit for any other location that might conflict with the minimum spacing distance from the location subject to the incomplete application appeal because that location would have to be held in a pending status until the appeal is resolved. See Rule 1680-02-03-.03(a)(a)7.(x) [renumbered as Rule 1680-11-01-.04(2)(l) in the proposed rules as revised].

1680-11-01-.04(10)(d) – Annual Renewal of Permits for Outdoor Advertising Devices

Comments: OAAT requests that the current rule be modified to include a reference to the notification requirement and timeline for voiding a permit based on failure to obtain the annual renewal permit as provided in T.C.A. § 54-21-104(c)(2).

Response: TDOT accepts the request for modification of the current rule regarding the notification requirement for failure to renew a permit; however, the notification provision is set out in subparagraph (10)(e) of the current rule. Accordingly, subparagraph (10)(e) of the rule will be revised to incorporate the applicable notification provision from T.C.A. § 54-21-104(c)(2), as follows:

In the event that a permit holder fails to renew a permit as provided in these rules, the permit will be not considered void until the Department has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in T.C.A. § 54-21-105(b). The Department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within one hundred twenty (120) days of receipt of the notice. If a permit holder fails to renew the permit within this one-hundred-twenty-day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in T.C.A. § 54-21-105. The notice given by the Department must include the requirements for renewal and consequences offailure to renew as provided in this subparagraph (e).

Rule 1680-11-01-.05 – Control of Nonconforming Outdoor Advertising Devices.

General Comment: Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region) asks why TDOT has deleted the "grandfathered non-conforming device" as a sign classification since it is defined in 23 CFR 750.707(c) and has been in the rules since outdoor advertising regulation began.

Response: The nominal distinction between "grandfathered non-conforming devices" and "nonconforming devices" is a distinction without a difference – that is, it has no substantive regulatory impact. Under the current rules, nonconforming devices and grandfathered nonconforming devices are subject to exactly the same restrictions on maintenance, upgrades, etc. [see current TDOT Rule 1680-02-03-.04(1)(a)] and exactly the same limitations on reconstruction if destroyed [see current TDOT Rule 1680-02-03-.04(2)]. Likewise, federal law makes no distinction in the regulation of nonconforming and grandfathered nonconforming devices. All nonconforming devices are subject to the same maintenance and continuation restrictions. See 23 CFR § 750.707(d). Finally, the definition of "nonconforming" in T.C.A. § 54-21-102(16) and in proposed Rule 1680-11-01-.02(21) applies to any outdoor advertising device that was lawfully erected but does not conform to the zoning, size, lighting, or spacing criteria established under either the original agreement or the supplemental agreement entered into between the Department and the Federal Highway Administration. It does not matter whether the nonconformance arises from the zoning classification of the location or the size, lighting, and spacing characteristics of the particular device.

1680-11-01-.05(3)(a) – Restrictions on Nonconforming Devices

Comments: OAAT notes that the provision regarding customary maintenance in subparagraph (3)(a) does not match the new definition of "customary maintenance" in the statute.

Response: TDOT concurs. Subparagraph (3)(a) will be revised as follows:

> Maintenance beyond customary maintenance will not be allowed. Customary maintenance is defined in Rule 1680-11-01-.02. Customary maintenance may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period.

1680-11-01-.05(3)(a)-(e) – Restrictions on Nonconforming Devices

Comments: OAAT states that "Because the statute offers an exemption, there should be a statement of exemption of any signs erected or altered during the time between September 11, 2019, and June 22, 2020."

Response: TDOT does not concur. The 2020 Act does not provide any "exemption" from regulation for outdoor advertising devices erected or altered during the period between September 11, 2019, and June 22, 2020 (the effective date of the 2020 Act). To the contrary, T.C.A. § 54-21-104(a)(3) expressly requires that any outdoor advertising device erected within the adjacent area and visible from the main traveled way of a highway on the interstate or primary highway system during this period "is deemed legal conforming or legal nonconforming and is required to obtain a permit and tag from the department as provided in subdivision (b)(2)." Likewise, T.C.A. § 54-21-104(b)(3) states that any outdoor advertising device with a valid permit effective on September 10, 2019, that was upgraded to a changeable message sign with a digital display between September 11, 2019, and the effective date of the 2020 Act "is required to apply for an addendum to the permit in accordance with this subdivision (b)(3)," and it further provides that the Department "shall process the application [for the addendum] in the same manner as provided for an original permit under subdivisions (b)(2)(E)-(H)." In other words, both new outdoor advertising devices and digital upgrades to existing devices erected or installed between September 11, 2019, and June 22, 2020, are required to obtain a permit or permit addendum, respectively, and each such device or upgrade will be characterized and regulated as either a legal conforming device or a legal nonconforming device in accordance with applicable provisions of T.C.A. § 54-21-104(b)(2). These provisions are also set forth in the proposed rules at Rule 1680-11-01-.04 in subparagraphs (2)(s) [as renumbered] and (3)(b), respectively.

1680-11-01-.05(4)(b) – Rebuilding or Repair of Destroyed Nonconforming Devices

Comments: OAAT requests that approval for the rebuilding or repair of nonconforming devices destroyed by vandalism or some other criminal or tortious act remain with the applicable Regional Highway Beautification Office, stating that

the repair of such devices should be made quickly and safely, but requiring approval by the Headquarters Highway Beautification Office will add financial and time costs to the process of repair and rebuilding these devices.

Response: TDOT accepts the request to restore the provision in the current rule giving each Regional Highway Beautification Office approval authority.

1680-11-01-.05(4)(d) – Rebuilding or Repair of Destroyed Nonconforming Devices

Comments: OAAT requests that this subparagraph in the current rule relating to the replacement or repair of the components of a nonconforming device destroyed by vandalism or other criminal or tortious act also make reference to the allowance for customary maintenance of such devices.

Response: TDOT agrees that such devices may be repaired in accordance with "customary maintenance" as defined in Rule 1680-11-01.02(10) and as further provided in Rule 1680-11-01-.05(3)(a); however, the provision for the rebuilding or repair of nonconforming devices destroyed by vandalism or other criminal or tortious acts is separate and distinct from customary maintenance. TDOT believes that it is appropriate to modify the current rule to add the following clarification:

> The replacement or repair of destroyed components of the device under this subparagraph is separate and distinct from, and does not operate as limitation of, the provision for customary maintenance of such devices.

Rule 1680-11-01-.06 – On-Premises Devices.

1680-11-01-.06(1)(b)2. – Criteria for On-Premises Devices

Comments: Mr. Charles Stofel, President, Columbia Neon Co., Inc.; Mr. Russell Witt, President, Witt Sign Co., Inc.; and Mr. Tom Flynn, President, Flynn Sign Co., Inc., offer comments similar to their comments concerning the definition of "on-premises device" and again request that this part (1)(b)2. of the proposed rule add a clarification that the owner or operator of the sign must not receive compensation "from a third party or parties for the placement of a message on the sign."

Response: TDOT concurs with this request for the reasons stated in response to the comments on the definition of "on-premises device" and would further note that this request is consistent with subparagraph (3)(a) of the proposed rule. Accordingly, this part (1)(b)2. of the rule will be revised to provide as follows:

> The owner or operator of the sign or the facility must not be receiving or intend to receive compensation from a third party or parties for the placement of a message or messages on the sign.

1680-11-01-.06(2) – Premises Test

Comments: Ms. Marge Davis, President, Scenic Tennessee, expresses support for the location criteria and restrictions established in this paragraph, "including the requirement that the premises must be a 'bona-fide commercial or industrial facility'."

Response: TDOT appreciates the expression of support; however, it is appropriate to clarify that the definition of a "facility" on which an on-premises device may be located is not restricted to commercial or industrial facilities. By definition, a "facility" may include "a commercial or industrial facility, *or other facility open to the public*, that operates with regular business hours on a year-round basis within a building or defined physical space." (Emphasis added.) Thus, a "facility" could be owned by a governmental agency or a non-profit organization and it could be operated for purposes other than a for-profit commercial or industrial enterprise.

1680-11-01-.06(3)(b) – Business of Outdoor Advertising

Comments: Subparagraph (3)(b) of the proposed rule provides that where there is more than one facility located on a single property and a sign is placed at the entrance to the property, the sign will not be considered an outdoor advertising device operated to receive compensation from third parties so long as the owner of the sign does not receive compensation from any person other than a facility located on the property and the owners of facilities located on the property do not receive compensation from any other person for the display of messages on the sign at the entrance to the property. Mr. Kenneth Peskin, Director of Industry Programs, International Sign Association, expresses concern that subparagraph (3)(b) would exclude, and render illegal, signs that otherwise meet the same non-compensation criteria but are located on a property with only one business.

Response: TDOT does not believe any clarification of the rule is needed. Subparagraph (3)(a) provides that a sign will not be considered an on-premises device, notwithstanding the location of the sign, but will be considered an outdoor advertising device in the business of outdoor advertising if the owner or operator of the sign receives compensation from a third party or parties for the placement of a message on the sign. If a sign located on a property containing only a single business or other facility qualifies as an on-premises device by its location, it will be treated as an on-premises device exempt from regulation under the 2020 Act or TDOT's rules so long as neither the owner/operator of the sign or the owner/operator of the facility receives compensation from any third party for the placement of messages on the sign. The purpose of subparagraph (3)(b) is to clarify that where there is a larger property on which more than one facility is located, such as a shopping mall, and the owner of the larger property places a sign at the common entrance to the larger property, the sign at the common entrance will not be considered as an outdoor advertising device in the business of outdoor advertising merely because the owners of the individual facilities located on the property pay the property owner to place a message on the sign at the common entrance so long

as neither the owner of the sign nor the owner of any individual facility located on the property receives compensation from any third party for the placement of messages on the sign.

Rule 1680-11-01-.07 – Removal of Abandoned Signs.

There were no public comments addressed specifically to this proposed rule. However, the final rule will be amended to make it consistent with the changes to the definition of "abandoned outdoor advertising device" in Rule 1680-11-01-.02(1), as follows:

(1) The permit for an abandoned outdoor advertising device shall be voidable after the twelve-month period of abandonment has passed, as follows:
   (a) The permit for a device that remains in a damaged condition for a period of twelve (12) months, which in the case of a wooden sign structure means that fifty percent (50%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or in the case of a metal sign structure that normal repair practices would call for replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support;
   (b) The permit for a device whose sign face or faces remain damaged fifty percent (50%) or more is voidable after the device has remained in that condition for a period of twelve (12) months;
   (c) The permit for a device that has a blank sign face for a period of twelve (12) months; or
   (d) The permit for a device that has been removed from its permitted location is voidable if it has not been reconstructed in its permitted location within twelve (12) months after its removal.
(2) An abandoned outdoor advertising device that no longer has an outdoor advertising permit is subject to removal or other enforcement action as provided in T.C.A. § 54-21-105.
(3) See illustration in Rule 1680-11-01-.10, Appendix, for examples of abandoned devices.

Rule 1680-11-01-.08 – Vegetation Control.

General Comment: OAAT expresses concern that the vegetation control rule has been "dramatically changed" with no input from the outdoor advertising industry or the legislature and therefore opposes any changes unrelated to statutory changes.

Response: OAAT's comment does not identify any specific examples of "dramatic change" in the vegetation control rule, and therefore TDOT is unable to offer any specific response. The most significant change in the proposed rule was the addition of a paragraph to address the application process to obtain an annual vegetation maintenance permit, which is authorized in the 2020 Act as it had been in the previous version of the code. The current rule only contains an acknowledgment that a

vegetation maintenance permit may be issued between April 15 and October 1 of each year, but it does not set out the process for obtaining the annual maintenance permit. Paragraph (4) of the proposed rule sets out the application process in a way that largely mirrors the application process for the original vegetation control permit set out in paragraph (3) of the current rule. Paragraph (3)(a) of the proposed rule also incorporates a provision from T.C.A. § 54-21-116(a)(1) of the 2020 Act stating that vegetation control permits issued pursuant to the Billboard Regulation and Control Act of 1972 shall be reinstated or, alternatively, the owner of the device may apply for a new vegetation control permit under the 2020 Act. TDOT believes that the proposed rule should be further revised to incorporate additional provisions from the 2020 Act, as indicated in the attached redline version of the proposed new Notice of Rulemaking Hearing.

1680-11-01-.08(3) – Application for Vegetation Control Permit

Comments: Mr. Scott Hibberts, General Manager, Reagan Outdoor Advertising of Chattanooga, comments generally that the overall process for vegetation control permits is slow and generally opposes any requirements or regulations beyond what is clearly set out in statute.

Response: The comment does not address or request any specific provision in the proposed rules and therefore TDOT is unable to provide any specific response. The purpose of the current and proposed rule, beyond incorporating provisions from the 2020 Act, is to detail the processes for obtaining vegetation control permits.

1680-11-01-.08(3)(d) – Application for Vegetation Control Permit

Comments: OAAT objects to the provision in part (d)2. of the proposed rule requiring a $5,000 surety bond for each vegetation control permit, rather than allowing a blanket bond, and also objects to the provisions in part (d)3. of the proposed rule that increase the coverage amounts required in the certificate of liability insurance. Mr. Scott Hibberts, General Manager, Reagan Outdoor Advertising of Chattanooga, also comments that the additional requirement for additional bonds makes it more difficult to keep an adequate number of permits active at one time.

Response: TDOT accepts the suggestion to revise the rule to allow for acceptance of a running surety bond; accordingly, part (3)(d)2. of the proposed rule [to be renumbered as Rule 1680-11-01-.08(e)2.] will be revised as follows:

> A surety bond (on a form provided by the Department) in the amount of $5,000 for each separate vegetation control permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

The proposed amendment to part (3)(d)3. of the proposed rule [to be renumbered as Rule 1680-11-01-.08(e)3.] updates the amount of liability insurance coverage to $300,000 per claimant and $1,000,000 per occurrence to match the current limits of the State's potential liability under the Tennessee Claims Commission Act. TDOT intends to retain this revision in the final rule.

1680-11-01-.08(4)(d) – Application for Vegetation Maintenance Permit

Comments: Similar to its comments regarding the proposed rule at subparagraph (3)(d), OAAT objects to the requirement for a $2,500 surety bond for each vegetation maintenance permit, rather than allowing a blanket bond, and to the level of coverage required in the certificate of liability insurance.

Response: TDOT accepts the suggestion to revise the rule to allow for acceptance of a running surety bond; accordingly, part (4)(d)1. of the proposed rule will be revised as follows:

> A surety bond (on a form provided by the Department) in the amount of $2,500 for each separate vegetation control permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

The proposed amendment to part (4)(d)2. of the proposed rule updates the amount of liability insurance coverage to $300,000 per claimant and $1,000,000 per occurrence to match the current limits of the State's potential liability under the Tennessee Claims Commission Act. TDOT intends to retain this revision in the final rule.

Rule 1680-11-01-.09 – Complaint Procedures.

General Comment: OAAT comments generally that the complaint procedures set out in the proposed rule are not what the outdoor advertising industry expected and that it will address its concerns in future legislative initiatives. More specifically, OAAT expresses concern that the complaint process will require TDOT to hire more personnel to administer the complaints and impose substantial costs on the outdoor advertising industry to defend against the complaints. Accordingly, in order to "make sure only verified and legitimate complaints are made," OAAT proposes that the complainant should be required to post a bond or fee that will be forfeited if the complaint is determined to be without merit. Lastly, OAAT does not support the proposal to post complaint findings on TDOT's public website as the statute does not require it.

Response: The 2020 Act directs TDOT in T.C.A. § 54-21-111 to promulgate rules to "establish procedures for accepting and resolving complaints related to signs that are subject to this chapter." It further directs that these complaint procedures must include:

(1) a requirement to describe the complaint procedures on TDOT's website; (2) a system to prioritize the resolution of complaints; and (3) a procedure for compiling and reporting detailed annual statistics about complaints. This directive to promulgate rules to establish a complaint procedure with these required elements originated with OAAT. It has been TDOT's understanding that the purpose is to establish an informal process for receiving and investigating complaints related to signs. The informal complaint procedures set out in the proposed rule are very closely modeled on a similar complaint process adopted in the State of Texas by the Texas Department of Transportation. See Texas Code of Administrative Regulations, Title 43 at § 21.203, Complaint Procedures. TDOT has contemplated that the burden of investigating and resolving an informal complaint under this rule would be borne by TDOT in the ordinary course of administering the outdoor advertising regulations. The proposed rule does not contemplate a formal complaint process akin to a contested case hearing where a complainant would bring charges against a member of the outdoor advertising industry and the industry would be called upon to defend itself.[10] Accordingly, TDOT does not see the necessity of requiring the complainant to post a bond to deter frivolous complaints. If a complaint is frivolous it should be relatively easy to dispose of it. Finally, the reason for proposing an annual publication of complaints on TDOT website is to address the requirement in T.C.A. § 54-21-111(3) to establish a procedure for "compiling and reporting detailed annual statistics about complaints." The statute does not say to whom TDOT should report these detailed statistics about complaints, so in the interest of transparency and the lack of any other alternative the rule proposes that the TDOT Highway Beautification Office will report this information on its public website.

Rule 1680-11-01-.10 – Appendix.

Illustrations #1 - Sign Face Size & Parts and #2 – Sign Face Size

Comments: OAAT references its comments regarding proposed Rule 1680-11-01-.03(1)(b) regarding the method for measuring the size of the sign face and its request for a compromise to allow for advertising embellishments outside the normal sign face. Scott Hibberts, General Manager, Reagan Outdoor Advertising of Chattanooga, requests that advertising embellishments be measured by the size of the embellishment and not entire airspace around the board.

Response: TDOT will revise the proposed rule as described in response to the comment on proposed Rule 1680-11-10-.03(1)(b); accordingly, Illustrations #1 and #2 will be revised to make them consistent with the revised rule.

Illustrations #6 – Device Types: Double-Face and #7 – Device Types: Stacked Device

[10] It is possible, of course, that a particular complaint could lead to an investigative request, and potentially a contested case hearing, as provided in T.C.A. § 54-21-105(c) and Rule 1680-11-01-.04(7), if TDOT has reason to believe that a sign is being operated as an outdoor advertising device without the required permit, but such proceedings would not be conducted under the informal complaint procedures set out in this rule.

Comments: OAAT questions that statutory authority to include trim and airspace in the sign face dimensions. Similarly, Scott Hibberts, General Manager, Reagan Outdoor Advertising of Chattanooga, requests that trims and airspace between panels should not be included in the measurement of the sign face.

Response: TDOT accepts the commenter's request only in part. T.C.A. § 54-21-113 [formerly T.C.A. § 54-21-116 under the Billboard Regulation and Control Act of 1972], directs the Commissioner of TDOT to enter into an agreement with the United States Secretary of Transportation regarding the size, lighting, and spacing of outdoor advertising devices permissible within commercial or industrial areas. Under both the original agreement executed on November 11, 1971 (see Section III.1.), and the supplemental agreement executed on October 16, 1984 (see amendment of Section III.1. in Section 2.), the maximum size of the sign includes the border and trim. However, TDOT agrees to revise the illustration to remove the airspace between sign faces on double-faced signs and stacked devices from the total area of the sign face. Rule 1680-11-01-.03(1)(b) will also be revised accordingly.

Illustration #8 – Abandoned vs. Damaged Device

Comment: OAAT references its comments regarding the definition of "abandoned outdoor advertising device" in proposed Rule 1680-11-01-.02.

Response: Illustration #8 will be revised in the proposed rule to make it consistent with the revised definition of "abandoned outdoor advertising device" in Rule 1680-11-01-.02.

Illustration #9 – Destroyed Non-Conforming Outdoor Advertising Device

Comment: OAAT asserts that the illustration is not representative of the law and no illustration is needed on this issue since the law is clear.

Response: The comment does not say specifically how the illustration is not representative of the law, so TDOT is unable to respond specifically. TDOT believes that providing an illustration of a destroyed non-conforming device assists in understanding how the law and rule will be applied.

Illustrations #10 and #11 – Sign Spacing: Measurement Methods; and Illustration #12 – Sign Spacing: Measurement Along a Curve

Comment: OAAT requests that the illustrations should reflect the exception found in Rule 1680-11-01-.03(1)(d) and (1)(i).

Response: TDOT believes this comment is in reference to the spacing exception from the minimum distance requirement of 1,000 feet along interstate and other

controlled access highways where outdoor advertising devices are not visible at the same time because of obstructions, as provided in Rule 1680-11-01-.03(1)(d)1.(i). TDOT accepts the commenter's request to include an illustration of the spacing exception.

Illustration #19 – Vegetation Control: Proper Removal

Comment: OAAT suggests that illustration for proper vegetation removal is unnecessary because the wording of the law and rule should stand on their own and there is no way to illustrate every possible situation at each site. OAAT further comments that the particular illustration shown only adds to confusion to an already inconsistent process across divisions of TDOT.

Response: TDOT acknowledges that an illustration cannot depict every possible situation at each site but believes that the illustration will help convey an understanding of proper vegetation removal. Rule 1680-11-01-.08 will be revised to describe proper vegetation removal and other conditions applicable to vegetation control permits.